



West Virginia E-Filing Notice

CC-02-2019-C-89

Judge: Laura Faircloth

To: J. Leslie
james.r.leslie@wvago.gov

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
Attorney General v. Christina Lester
CC-02-2019-C-89

The following motion was FILED on 5/7/2019 11:31:29 AM

Notice Date: 5/7/2019 11:31:29 AM

Virginia Sine
CLERK OF THE CIRCUIT
Berkeley
380 W. South Street
MARTINSBURG, WV 25401

(304) 264-1918
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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

PATRICK MORRISEY,
STATE OF WEST VIRGINIA,
ex rel. A. P. and O. R.,
infants under the age of eighteen years,

Plaintiff,

v.

CIVIL ACTION NO. CC-02-2019-89

JUDGE: HON. LAURA FAIRCLOTH

CHRISTINA LESTER,
JUNE YURISH,
KRISTIN DOUTY,
AMBER BOECKMANN,
MARGARET E. KURSEY,
And
THE BERKELEY COUNTY
BOARD OF EDUCATION,

Defendants,

NOTICE OF MOTION UNDER RULE 15

PLEASE TAKE NOTICE, Patrick Morrissey, Attorney General for the State of West Virginia, on behalf of A.P. and O. R. infants under the age of eighteen years, by and through Senior Deputy Attorney General J. Robert Leslie, will bring on for hearing, the attached *Motion to Amend Complaint*, before Honorable Virginia Sine, in her courtroom located at 380 West South Street, Suite 200, Martinsburg, West Virginia 25401, at a date and time to be determined by the Court. You are invited to attend and protect your interests as they may appear.

Respectfully submitted,
PATRICK MORRISEY,

STATE OF WEST VIRGINIA,
ex rel. A. P. and O. R.,
infants under the age of eighteen years.

PATRICK MORRISSEY
ATTORNEY GENERAL

s J. Robert Leslie
J. ROBERT LESLIE (WVSB#6341)
SENIOR DEPUTY ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
208 Capitol Street, 3rd Floor
Post Office Box 1789
Charleston, West Virginia 25326-1789
(304) 558-0546

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

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THE BERKELEY COUNTY
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Defendants.

MOTION TO AMEND COMPLAINT

Now comes Patrick Morrissey, Attorney General for the State of West Virginia, on behalf of A.P. and O. R. infants under the age of eighteen years, by and through Senior Deputy Attorney General J. Robert Leslie, and files this *Motion to Amend Complaint*, pursuant to Rule 15 of the West Virginia Rules of Civil Procedure, stating the following in support thereof:

1. Plaintiff Patrick Morrissey, Attorney General for the State of West Virginia, on behalf of A.P. and O. R. infants under the age of eighteen years filed Complaint 2019-C-89 on February 19, 2019, pursuant to West Virginia Code § 5-11-20 and Rule 65 of the West Virginia Rules of Civil Procedure.

2. Plaintiff discovered additional facts demonstrating that others bear a share of liability in addition to those defendants already named. Accordingly, Plaintiff files this Motion to Amend Complaint in an effort to bring all those potentially liable before the Court in an effort to obtain a full adjudication.

3. Leave to amend "shall be freely given when justice so demands;" therefore motions to amend should always be granted where amendment permits presentation on merits of actions, adverse party is not prejudiced by sudden assertion of subject of amendment, and adverse party can be given ample opportunity to meet issue. Rules of Civ. Pro., Rule 15(a). *Mauck v. City of Martinsburg*, 1987, 357 S.E.2d 775, 178 W.Va. 93; *McCoy v. CMMC, Inc.*, 2001, 210 W.Va. 324, 557 S.E.2d 378.

4. A copy of the proposed *Amended Complaint* is attached hereto as **Exhibit 1**.

WHEREFORE, for good cause shown, Patrick Morrissey, Attorney General for the State of West Virginia, on behalf of A.P. and O. R. infants under the age of eighteen years respectfully

requests that this tribunal GRANT the *Motion to Amend Complaint* and for such other relief as the Court deems reasonable.

Respectfully submitted,
PATRICK MORRISEY,
STATE OF WEST VIRGINIA,
ex rel. A. P. and O. R.,
infants under the age of eighteen years.

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ J. Robert Leslie
J. ROBERT LESLIE (WVSB#6341)
SENIOR DEPUTY ATTORNEY GENERAL
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THE BERKELEY COUNTY
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Defendants.

CERTIFICATE OF SERVICE

I, J. Robert Leslie, Senior Deputy Attorney General of the State of West Virginia, hereby certify that the foregoing *Motion to Amend Complaint* was served upon the following, by depositing a true copy thereof in the United States mail, first class postage prepaid, on the 7th day of May, 2019, addressed as follows:

To: Christina Lester, Pro Se
610 Jefferson Avenue
Charles Town, West Virginia 25414

A copy was served by electronic mail to:

Christian J. Riddell, Esq.
Law Offices of Stedman & Riddell
329 South Queen Street

Martinsburg, West Virginia 25401
Counsel for Defendants June Yurish and Kristin Douty

The original was filed electronically this date upon:

The Honorable Virginia Sine
Berkeley County Circuit Clerk
Twenty-Third Judicial Circuit
380 West South Street, Suite 2200
Martinsburg, West Virginia 25401

s/ J. Robert Leslie
J. ROBERT LESLIE (WVSB#6341)
SENIOR DEPUTY ATTORNEY GENERAL
MEGAN C. GOODALL (WVSB#12700)
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
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And
THE BERKELEY COUNTY
BOARD OF EDUCATION.

Defendants.

**AMENDED COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Now comes Patrick Morrissey, Attorney General for the State of West Virginia, on behalf of A.P. and O. R, infants under the age of eighteen years, by and through Senior Deputy Attorney General J. Robert Leslie, pursuant to West Virginia Code § 5-11-20 and Rule 65 of the West Virginia Rules of Civil Procedure, and hereby seeks a Civil Rights Injunction enjoining the above-named Defendants from certain discriminatory and illegal behavior as set out in detail below.

In support hereof, the Plaintiff states and alleges as follows:



1. The Plaintiff is the Attorney General of the State of West Virginia who has a statutory duty to protect the human and civil rights of all persons within the State's jurisdictional confines.

2. Beginning on or about February 13, 2019, the Office of Attorney General received multiple constituent complaints regarding the unlawful and discriminatory conduct described below. Such complaints prompted Patrick Morrissey, as Attorney General of the State of West Virginia to initiate an immediate civil rights investigation. The following complaint is based upon the findings of that investigation.

3. A. P. is an infant, under the age of eighteen, is non-verbal as a result of autism, and for all times relevant in this action was a student at Berkeley Heights Elementary School in a special needs class.

4. O. R. is an infant, under the age of eighteen, is non-verbal as a result of autism, and for all times relevant in this action was a student at Berkeley Heights Elementary School in a special needs class.

5. The Defendant Christina Lester upon information of belief, is a resident of Berkeley County, West Virginia, and at all times relevant herein served as special education teacher for the Berkeley County Board of Education and as such is a mandatory reporter of suspected child abuse or neglect pursuant to West Virginia Code §49-2-803(a).

6. The Defendant June Yurish upon information of belief, is a resident of Berkeley County, West Virginia, and at all times relevant herein served as special education teacher's aide for the Berkeley County Board of Education and as such is a mandatory reporter of suspected child abuse or neglect pursuant to West Virginia Code §49-2-803(a).

7. The Defendant Kristin Douty upon information of belief, is a resident of Berkeley County, West Virginia, and at all times relevant herein served as special education teacher's aide for the Berkeley County Board of Education and as such is a mandatory reporter of suspected child abuse or neglect pursuant to West Virginia Code §49-2-803(a).

8. The Defendant Amber Boeckmann upon information of belief, is a resident of Berkeley County, West Virginia, and at all times relevant herein served as the Principal of Berkeley Heights Elementary School for the Berkeley County Board of Education and as such is a mandatory reporter of suspected child abuse or neglect pursuant to West Virginia Code §49-2-803(a).

9. The Defendant Margaret F. Kursey upon information of belief, is a resident of Berkeley County, West Virginia, and at all times relevant herein served as a Deputy Superintendent for the Berkeley County Board of Education and as such is a mandatory reporter of suspected child abuse or neglect pursuant to West Virginia Code §49-2-803(a).

10. The Defendant, Berkeley County Board of Education is a county governmental board with its principle place of business located in Martinsburg, Berkeley County, West Virginia.

11. The incidents complained of herein occurred in Martinsburg, Berkeley County, West Virginia.

12. The requirements of both subject matter jurisdiction and venue are satisfied under the provisions of W. Va. Code § 5-11-20(b)(3).

FACTS

13. Amber Pack is the mother of A. P. and has a statutory and moral obligation to protect and provide for her child.

14. On or about October 2, 2018, A. P. returned from attending school at Berkeley Heights Elementary School with bruising on her upper arms consistent with being grabbed in a physical manner which placed Ms. Pack under a reasonable and good faith basis to suspect her child, A. P., was being subjected to threats, abuse, and or intimidation while her child attended special needs classes at Berkeley Heights Elementary School.

15. Based upon this belief, on October 4, 2018, Ms. Pack placed a recording device in A. P.'s hair before sending her to school. In doing so, Ms. Pack vicariously consented to the recording on behalf of A. P.

16. Berkeley Heights Elementary School is a public school located in Martinsburg, Berkeley County, West Virginia.

17. On October 4, 2018, A. P. wore the recording device placed by Ms. Pack into a public classroom occupied by Defendants as well as occupied by O. R., another special needs child.

18. The public classroom into which A. P. wore the microphone was not a private place and its occupants held no legally recognized reasonable expectation of privacy.

19. A. P.'s microphone recorded the ambient sounds of her public classroom as well as the content of certain statements directed at both A. P. and O. R.

20. The comments of the Defendants, and each of them, depicted on the recording and directed at A. P. and O. R. include threats of violence, verbal abuse and other outrages.

21. On or about October 5, 2018, Ms. Pack took a portion of the recording to the Martinsburg Police Department when Pack made a criminal report of child abuse to Patrol Officer Brittany Conner.

22. On October 5, 2018, Officer Conner and two other uniformed officers of the Berkeley Police Department responded to Berkeley Heights Elementary School where the officers played portions of the tape for Defendant Boeckmann, and informed her of the allegations made by Ms. Pack.

23. Immediately upon speaking with the officers, Defendant Boeckmann informed Yurish and Douty of the allegations, called Yurish and Douty to the office, but failed to segregate them as they reported to the office.

24. Defendant Boeckmann did not take a detailed statement from either Yurish or Douty, but instead informed them a statement would be taken Monday and sent them home for the weekend.

25. On or about October 5, 2018, after speaking with the police officers and hearing the tape, Defendant Boeckmann informed Defendant Kursey at the Berkeley County Board of Education of the allegations and the content of the tape.

26. On October 7, 2018, Defendant Kursey recognized the need for an investigation and instructed Defendant Boeckmann to conduct a school level investigation.

27. Defendant Boeckmann was specifically instructed by Kursey to listen to the entirety of the tape and report its content in the course of Boeckmann's investigation.

28. According to Boeckmann, the Defendant Kursey instructed Boeckmann to then have Amber Pack destroy the tape giving rise to this and the related actions.

29. Upon information and belief, when Defendant Boeckmann reported the findings of her investigation to the Board office, she provided incorrect, false, or misleading information by asserting that she had listened to the tape and that the tape did not depict offending statements directed at the special needs students, but instead consisted of the adults interacting with each other.

30. On October 9, 2018, Ms. Pack sent Special Needs Coordinator Karen Petrucci an email link to the October 5 tape.

31. On October 11, after receiving no response, Pack again sent the same email to Petrucci and this time forwarded copies of the email to Superintendent Manny Arvon and Assistant Superintendent David Banks.

32. On October 29, 2018, Ms. Pack met with representatives of the Defendant Berkeley County Board of Education to discuss A. P. returning to classes at a new school. During this meeting Ms. Pack learned that Defendants Lester, Yurish, and Douty were still teaching at Berkeley Heights Elementary and that no apparent action had been taken to safeguard other special needs children from suffering the abuses of the kind depicted on the recording.

33. Immediately thereafter, on October 29, 2018, Ms. Pack posted information concerning the incident on her social media feed.

34. On October 31, 2018, Ms. Pack posted the recording on her social media feed.

35. On November 2, 2018, Ms. Pack inquired whether the Defendant Board intended to undertake any investigation.

36. On November 2, 2018, Ms. Pack was informed that those involved had been placed on administrative leave. However, Defendant Lester was still in the classroom.

37. On November 14, 2018, a report was filed for the first time by Pack with Child Protective Services regarding the incidents of October 4, 2018. Upon information and belief that complaint was screened out when CPS was informed by the Board of Education that the tape only depicted two adults speaking to each other and not speaking to students. A second report was made on November 16, 2018, which later provides the basis of CPS's finding of abuse.

38. On December 4, 2018, the Defendant Berkeley County Board of Education allowed the Defendant Lester to resign from her employment.

39. On February 14, 2019, the Defendant Berkeley County Board of Education allowed the Defendants Yurish and Douty to resign from their employment.

COUNT ONE VIOLATION OF CIVIL RIGHTS

40. The Plaintiff adopts by reference each and every allegation set forth in Paragraphs One through Thirty-nine (39) as if fully set forth herein.

41. West Virginia Code § 5-11-20(b) provides a cause of action exclusively for the Attorney General to seek an injunction against any person who intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, *or by threat by physical force or violence*, or attempts to so interfere, with the exercise or enjoyment by any other person of those rights secured by the West Virginia Human Rights Act or the West Virginia Fair Housing Act.

42. Accordingly, Defendants Lester, Yurish and Douty who are adults placed into a position of trust regarding A. P. and O. R. as educational professionals, verbally assaulted A. P. and O. R., non-verbal, special-needs children, threatening each of them with physical violence.

COUNT TWO
FAILURE TO REPORT VIOLATION OF STATUTE, WHICH INTERFERED WITH
CHILDREN'S RIGHTS UNDER HUMAN RIGHTS ACT

43. The Plaintiff adopts by reference each and every allegation set forth in Paragraphs One through Forty-two (42) as if fully set forth herein.

44. West Virginia Code § 49-2-803(a) states,

(a) Any ... school teacher or other school personnel, ... who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources.

Accordingly, Defendants Lester, Yurish, Douty, Boeckmann, and Kursey are each "mandatory reporters," under West Virginia Code §49-2-803(a).

45. Under West Virginia Code § 49-2-803(a), Defendants Lester, Yurish, Douty, Boeckmann, and Kursey each had a non-delegable duty to report the suspected abuse to Child Protective Services within twenty-four (24) hours of the receipt of the information which reasonably did or should have given rise to a reasonable suspicion that abuse or neglect may have occurred.

46. Defendants Lester, Yurish, Douty, Boeckmann, and Kursey each failed or refused to contact CPS to the report the alleged abuse as required by law.

47. Moreover, both Defendants Boeckmann and Kursey actively tried to hinder the investigation and obscure evidence.

48. In failing and/or refusing to report, each of the above-named Defendants Lester, Yurish, Douty, Boeckmann and Kursey violated West Virginia Code 49-2-803(a) thereby subjecting A. P., O. R., and all other similarly situated special need students to the risk of continuing abuses of the kind depicted on the October 4 tape.

49. By failing to report as required by law, all aforementioned defendants interfered "with the exercise or enjoyment by any person of those rights secured by the West Virginia Human Rights Act...."

COUNT THREE,
INEFFECTIVE AND FLAWED INVESTIGATION BY DEFENDANTS
RESULTING IN CONTINUED INTERFERENCE WITH CHILDREN'S RIGHTS
UNDER HUMAN RIGHTS ACT

50. The Plaintiff adopts by reference each and every allegation set forth in Paragraphs One through Forty-nine (49) as if fully set forth herein.

51. Upon information and belief, the administrators at Berkeley Heights Elementary School and/or at the Berkeley County Board of Education, specifically including but not limited to Defendants Boeckmann and Kursey, failed to take reasonably expected action or conduct a reasonable investigation into this alleged abuse.

52. Rather, the Defendants Boeckmann's and Kursey's actions appear to be calculated to hide the realities of a purported abuse within the special education class and their actions did not increase the likelihood of an accurate investigative finding, but instead the acts were calculated to minimize the allegations.

53. More importantly, upon information and belief, the investigation was ineffective and/or misleading.

54. By conducting a flawed and ineffective investigation, Defendants Boeckmann and Kursey interfered "with the exercise or enjoyment by any person of those rights secured by the West Virginia Human Rights Act..."

COUNT FOUR AGENCY LIABILITY FOR BERKELEY COUNTY BOARD OF EDUCATION

54. The Plaintiff adopts by reference each and every allegation set forth in Paragraphs One through Fifty-three (53) as if fully set forth herein.

52. For all times relevant herein, Lester, Yurish, Douty, Boeckmann, and Kursey, individually and as Defendants herein, were acting within the scope of their employment by the Defendant, Berkeley County Board of Education.

53. In so acting, the Defendants Lester, Yurish, Douty, Boeckmann, and Kursey were agents or servants of the Defendant Berkeley County Board of Education which acts through them, thus subjecting the Board to the same liabilities as the individual defendants.

RESERVATION OF RIGHT

54. Patrick Morrissey, West Virginia Attorney General, reserves the right to name additional defendants and/or plead additional counts as the investigation into these matters continue.

RELIEF REQUESTED

Plaintiff State of West Virginia respectfully requests this Court to enter the following relief:

1. Enter a Preliminary Injunction and a Permanent Injunction enjoining each of the above-named Defendants from:

a. assaulting, using physical force or violence, threatening to use physical force or violence, intimidating, coercing or harassing, or attempting to assault, use physical force or violence, threaten to use physical force or violence, intimidate, coerce or harass A. P. or O. R. motivated by bias based upon race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

b. assaulting, using physical force or violence, threatening to use physical force or violence or attempting to use physical force or violence on any person motivated by bias based upon race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

c. causing or attempting to cause damage to or trespass upon the property where A. P. or O. R. reside, and any other person motivated by bias based on race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

d. assaulting, using physical force or violence, threatening to use physical force or violence, intimidating, coercing or harassing, or attempting to assault, threaten, intimidate, coerce or harass any person or causing or attempting to cause damage to or trespass upon the property of any person because he did or might complain of or testify about acts alleged in this Complaint or acts prohibited by West Virginia or Federal law, or did or might cooperate in any investigation concerning such acts;

e. speaking to, telephoning, writing or otherwise communicating with the immediate family members of A. P. or O. R. except through attorneys in order to prepare for Defendants' defense in any criminal prosecution;

f. knowingly approaching within 500 feet of any location they know or suspect is occupied by A. P. or O. R., and or their respective immediate family members;

g. encouraging or causing any other person to engage in conduct prohibited in paragraphs (a)-(f) above, or assisting any person in engaging in such conduct.

2. Enter a Preliminary Injunction and a Permanent Injunction enjoining each of the above-named Defendants from occupying any position, paid or volunteer, in which they exercise and supervisory duty or obligation to infants under the age of eighteen within the State of West Virginia.

3. Declare that the Defendants have each violated the West Virginia Human Rights Act, W. Va. Code § 5-11-1, *et seq.*

4. Order each individual Defendant to pay a civil penalty of \$5,000.00 per defendant, or in an appropriate amount to be established by the Court, for each violation.

5. Order each Defendant to fully and completely comply with their obligations under West Virginia Code §49-2-803(a) in this and all future incidents.

6. Order the Defendants to pay the reasonable attorney's fees and costs of the associated with the drafting, filing, arguing of this motion and the enforcement of any resultant order.

7. Grant other such relief as is just and proper.

PATRICK MORRISEY,
STATE OF WEST VIRGINIA,
ex rel. A. P. and O. R.,
infants under the age of eighteen years.

PATRICK MORRISEY
ATTORNEY GENERAL

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